

This General Information Letter provides suggestions for improvements to, but does not comment on the accuracy of, a private legal publication. See 86 Ill. Adm. Code 140.101 (This is a GIL).

January 31, 2002

Dear Xxxxx:

This is in response to your letter of November 19, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you stated and made inquiry as follows:

The enclosed Report and Tax Bulletins have been reviewed editorially and are scheduled to be mailed to corporations represented by us in the State. In order to be sure they reflect as accurately as possible the current policies of the administering officials, it has been our practice to submit the Bulletins in advance of the actual mailings for their approval.

Any comments or suggestions you may wish to make will be given full consideration and any changes requested by you which apply to general business corporations will be adopted, subject of course to space limitations in our Bulletins.

Your cooperation will be much appreciated.

The Department will not approve the accuracy of private legal publications. Some suggestions regarding the draft attached to your letter, however, are provided below for your consideration.

In referencing what persons are subject to the Retailers' Occupation Tax Act and Use Tax Act, it may be worth noting that the Acts also apply to sellers of prepaid telephone calling arrangements. Beginning January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to sales tax, regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. See 35 ILCS 120/2 and 2-27.

In both the Retailers' Occupation Tax and Use Tax section and the Service Occupation Tax and Service Use Tax section, the draft contains references to threshold amounts for making mandatory quarter-monthly payments, as well as amounts of average monthly liability that would release the taxpayer from the continued requirement of making mandatory quarter-monthly

payments. We must point out that taxpayers with an average monthly tax liability of \$20,000 or more during the preceding four calendar quarters are required to make quarter-monthly payments. This requirement continues until the average monthly liability for the four preceding complete calendar quarters, excluding the months of highest and lowest liability, is less than \$19,000, or until the average monthly liability for each calendar quarter of the four preceding complete calendar quarters is less than \$20,000. Additionally, a taxpayer may petition for a change in reporting status if he can show a substantial change in business has occurred causing the taxpayer to anticipate that his average monthly liability for the reasonably foreseeable future will be less than \$20,000. See 35 ILCS 120/3.

The draft language under these sections also refers to the ST-1 Sales and Use Tax Return as a "report" or "report forms". In order to eliminate confusion as to what is filed with the Department, we advise that the ST-1 be referred to as a "return" instead. The distinction is an important one, as failure to file a return will subject a taxpayer to certain penalties and interest under the Uniform Penalty and Interest Act that would not be imposed for failing to submit other forms to the Department. See 35 ILCS 735/3-3.

Under the "Rate of Tax" paragraph in the Retailers' Occupation Tax and Use Tax section, the 6.25% sales tax rate for motor fuel and gasohol became effective January 1, 2001, rather than July 1, 2001. Previously, a temporary sales tax rate of 1.25% was in effect for motor fuel and gasohol from July 1, 2000 and through December 31, 2000.

It is also not technically correct to refer to the 1.75% discount taken by the retailer when filing his return as "compensation" for collecting and remitting taxes. This discount is intended to reimburse the retailer for expenses incurred in keeping records, preparing and filing returns and remitting the tax and supplying data to the Department.

Under the paragraph referring to the Hotel Operators' Occupancy Tax, tax at a rate of 5% of 94% of gross rental receipts is imposed. However, there is also an additional tax imposed on persons engaged in the business of renting rooms in a hotel and is at a rate of 1% of 94% of gross rental receipts.

With regards to the Service Occupation Tax and Service Use Tax section of your draft, we would like to point out a few points that should be clarified in your draft. Under the "Registration" paragraph, please be aware that not all service providers maintaining a place of business in Illinois are required to apply for a Certificate of Registration. Serviceman considered "de minimis" (cost ratio between the tangible personal property transferred incident to sales of service and the serviceman's total annual gross receipts is less than 35%) and incurring Use Tax on their cost price need not apply for a Certificate of Registration if they are not otherwise required to register under Section 2a of the Retailers' Occupation Tax Act.

Under the "Rate of Tax" paragraphs, information should also be included which explains that non-registered de minimis servicemen incur a 6.25% Use Tax on their cost price which is remitted either to their supplier at the time of purchase or to the Department as part of self-assessment.

Additionally, it would be beneficial to you and to your readers to refer to the Department regulations on Service Occupation Tax, 86 Ill. Adm. Code Sections 140.101 through 140.1701, which were recently amended. You may obtain a copy of these regulations from our Web site at www.revenue.state.il.us/Laws/regs/part140/.

I hope this information has been helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois

sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

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